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INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY
WASHINGTON, D.C. 20511

September 17, 2019

VIA ELECTRONIC TRANSMISSION

The Honorable Adam Schiff
Chairman
Permanent Select Committee on Intelligence
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Devin Nunes
Ranking Member
Permanent Select Committee on Intelligence
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Schiff and Ranking Member Nunes:

(U//FOUO) In a previous letter to you dated September 9, 2019, I informed you that I was continuing my efforts to obtain direction from the Acting Director of National Intelligence (Acting DNI) concerning a disclosure from an individual (hereinafter, "the Complainant") regarding an alleged "urgent concern," pursuant to 50 U.S.C. § 3033(k)(5)(A).¹ The statute that established and authorized the Office of the Inspector General of the Intelligence Community (ICIG) provides that if the ICIG is unable "to resolve . . . differences with the Director [of National Intelligence] affecting the execution of the duties or responsibilities of the Inspector General," the ICIG should immediately notify, and submit a report to, the congressional intelligence committees on such matters.² Although I had hoped that the Acting DNI would provide direction, through me, on how the Complainant can contact the congressional intelligence committees directly "in accordance with appropriate security practices,"³ I have now determined that the Acting DNI and I are at an

¹ (U) 50 U.S.C. § 3033(k)(5)(A) provides that an "employee of an element of the intelligence community, an employee assigned or detailed to an element of the intelligence community, or an employee of a contractor to the intelligence community who intends to report to Congress a complaint or information with respect to an urgent concern may report such complaint or information to the Inspector General."

² (U) *Id.* at § 3033(k)(3)(A)(i).

³ (U) *Id.* at § 3033(k)(5)(D)(i) and (ii).

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impasse over this issue, which necessitates this notification and report on our unresolved differences.

(U//FOUO) On September 13, 2019, I received a copy of a letter, dated the same day, sent from Jason Klitenic, General Counsel, Office of the Director of National Intelligence, to the Chair and Vice Chair of the Senate Select Committee on Intelligence, and to you, as the Chair of the House Permanent Select Committee on Intelligence (HPSCI), and as the Ranking Member of the HPSCI. In that letter, Mr. Klitenic informed the congressional intelligence committees that the Acting DNI had determined, after consulting with the Department of Justice (DOJ), "that no statute requires disclosure of the complaint to the intelligence committees" because "the disclosure in this case did not concern allegations of conduct by a member of the Intelligence Community or involve an intelligence activity under the DNI's supervision." I understand that I am bound by the determination reached as a result of the Acting DNI's consultations with DOJ, and the ICIG will continue to abide by that determination.

(U//FOUO) I, nevertheless, respectfully disagree with that determination, particularly DOJ's conclusion, and the Acting DNI's apparent agreement with the conclusion, that the disclosure in this case does not concern an intelligence activity within the DNI's authority, and that the disclosure therefore need not be transmitted to the congressional intelligence committees. In a letter sent on today's date to DOJ, a copy of which I provided to the Acting DNI, I outlined my reasons for disagreeing with DOJ's analysis of the facts presented in the instant case and the conclusions reached regarding the same. I set forth the reasons for my concluding that the subject matter involved in the Complainant's disclosure not only falls within the DNI's jurisdiction, but relates to one of the most significant and important of the DNI's responsibilities to the American people. Because of the disagreement that exists between myself, DOJ, and the Acting DNI, I have requested authorization from the Acting DNI to disclose, at the very least, the general subject matter of the Complainant's allegations to the congressional intelligence committees. To date, however, I have not been authorized to disclose even that basic information to you, in addition to the important information provided by the Complainant that is also being kept from the congressional intelligence committees.

(U//FOUO) In addition, it appears to me that the Acting DNI has no present intention of providing direction to the Complainant, through me, on how the Complainant can contact the congressional intelligence committees directly "in accordance with appropriate security practices."⁴ Although I appreciate that the Acting DNI has provided his personal assurance that the Complainant will be protected if the Complainant's identity becomes known and the Complainant is reprised against, or threatened with reprisal, for making the disclosure, such personal assurance is not the legally enforceable statutory protection previously available to whistleblowers in the Complainant's situation.

(U//FOUO) As it now stands, my unresolved differences with the Acting DNI are affecting the execution of two of my most important duties and responsibilities as the Inspector General of

⁴ (U) *Id.* at § 3033(k)(5)(D)(i) and (ii).

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the Intelligence Community. First, the differences are affecting what I view as my significant responsibilities toward the Complainant, an employee, detailee, or contractor in the Intelligence Community, who wants to disclose to Congress in an authorized and protected manner information that involves classified information that the Complainant believes in good faith is “with respect to an urgent concern.”⁵

(U//FOUO) Second, the unresolved differences are affecting the execution of the ICIG’s statutory responsibility to ensure that the congressional intelligence committees are kept currently and fully informed of “significant problems and deficiencies relating to programs and activities within the responsibility and authority of the Director of National Intelligence.”⁶ The DNI’s decision not to transmit my determination or any of the Complainant’s information to the congressional intelligence committees, for reasons other than awaiting a classification review or asserting appropriate privileges, may reflect a gap in the law that constitutes a significant problem and deficiency concerning the DNI’s responsibility and authority – or perceived responsibility and authority – relating to intelligence programs or activities.

(U//FOUO) Further, the resulting inability for an employee, detailee, or contractor in the Intelligence Community to receive direction from the Acting DNI, through the Inspector General, on how to contact the congressional intelligence committees directly in accordance with appropriate security practices concerning what appear to be good faith and credible allegations “with respect to an urgent concern,”⁷ even if it is later determined by others that the alleged conduct falls outside the definition of “urgent concern,” may itself constitute a significant problem and deficiency concerning the DNI’s responsibility and authority relating to intelligence programs or activities. In addition, the Complainant’s current predicament, where an individual used the urgent concern process in good faith, but in the future might not be statutorily protected from reprisal or the threat of reprisal for making the disclosure, may also constitute a significant problem and deficiency concerning the DNI’s responsibility and authority relating to intelligence programs or activities.⁸

(U) I remain committed to ensuring that individuals in the Intelligence Community who disclose allegations of wrongdoing in good faith and in an authorized manner to the ICIG receive consistent, effective, and enforceable protections from actions constituting a reprisal, or threat of reprisal, for making such a disclosure. I will also continue my efforts to ensure individuals in the

⁵ (U) *Id.* at § 3033(k)(5)(A).

⁶ (U) *Id.* at § 3033(b)(4).

⁷ (U) *Id.* at § 3033(k)(5)(A).

⁸ (U//FOUO) DOJ’s legal opinion may have significant implications for whistleblower rights and protections for all Executive Branch departments and agencies, as well as the government contracting industry. The ICIG has asked DOJ to clarify, among other things, whether the Complainant and those individuals similarly situated to the Complainant, now or in the future, are protected from actions constituting a reprisal, or threat of reprisal, in response to reporting an alleged urgent concern, or other allegations of waste, fraud, or abuse, that may later be determined to fall outside the jurisdiction of the individual’s department or agency.

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Intelligence Community have a consistent, authorized, and effective means to report such allegations to the congressional intelligence committees. Please do not hesitate to contact me if you have any questions regarding this important matter.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'M. K. Atkinson', with a long horizontal flourish extending to the right.

Michael K. Atkinson
Inspector General
of the Intelligence Community

cc: The Honorable Joseph Maguire
Director of National Intelligence (Acting)

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